

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 1945

To authorize appropriations for fiscal year 1995 for certain maritime programs of the Department of Transportation, to amend the Merchant Marine Act, 1936, as amended, to revitalize the United States-flag merchant marine, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 17 (legislative day, FEBRUARY 22), 1994

Mr. HOLLINGS (by request) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To authorize appropriations for fiscal year 1995 for certain maritime programs of the Department of Transportation, to amend the Merchant Marine Act, 1936, as amended, to revitalize the United States-flag merchant marine, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

### 3       **TITLE I—MARITIME ADMINISTRATION**

### 4       **AUTHORIZATION OF APPROPRIATIONS**

#### 5       **SEC. 101. SHORT TITLE.**

6       This title may be cited as the “Maritime Administra-  
7       tion Authorization Act for Fiscal Year 1995”.

1 **SEC. 102. AUTHORIZATION OF APPROPRIATIONS FOR FIS-**  
2 **CAL YEAR 1995.**

3 Funds are authorized to be appropriated without fis-  
4 cal year limitation, as Appropriations Acts may provide  
5 for the use of the Department of Transportation, for the  
6 fiscal year ending September 30, 1995, as follows:

7 (a) For payment of obligations incurred for  
8 operating-differential subsidy, not to exceed  
9 \$214,356,000.

10 (b) For expenses necessary for operations and  
11 training activities, not to exceed \$77,000,000, in-  
12 cluding reception and representation expenses asso-  
13 ciated with graduation functions at the Merchant  
14 Marine Academy at Kings Point, New York.

15 (c) For expenses necessary to acquire and  
16 maintain the Ready Reserve Force surge shipping  
17 and resupply capability in an advanced state of read-  
18 iness, and for related programs, not to exceed  
19 \$250,000,000.

20 (d) For the costs, as defined in section 502 of  
21 the Federal Credit Reform Act of 1990, of guaran-  
22 teed loans authorized by title XI of the Merchant  
23 Marine Act, 1936, as amended (46 App. U.S.C.  
24 1271, et seq.), \$50,000,000. In addition, for admin-  
25 istrative expenses related to loan guarantee commit-  
26 ments under title XI of the Merchant Marine Act,

1 1936, as amended (46 App. U.S.C. 1271, et seq.),  
2 \$4,000,000.

3 **SEC. 103. MERCHANT SHIP SALES ACT OF 1946 AMEND-**  
4 **MENT.**

5 Section 11 of the Act of March 8, 1946 (50 App.  
6 U.S.C. 1744), is amended—

7 (a) by striking “Secretary of the Navy,” in sub-  
8 section (b)(2) and inserting “Secretary of Defense,”;  
9 and

10 (b) by striking subsection (c) and redesignating  
11 subsection (d) as subsection (c).

12 **SEC. 104. SUBMISSION OF REPORT ON CONDITION OF PUB-**  
13 **LIC PORTS.**

14 Section 308(c) of title 49, United States Code, is  
15 amended by inserting “even-numbered” between “each”  
16 and “year”.

17 **TITLE II—AMENDMENTS TO THE**  
18 **MERCHANT MARINE ACT, 1936**

19 **SEC. 201. SHORT TITLE.**

20 This title may be cited as the “Maritime Security and  
21 Trade Act of 1994”.

22 **SEC. 202. MARITIME SECURITY PROGRAM.**

23 (a) Title VI of the Merchant Marine Act, 1936, as  
24 amended (46 App. U.S.C. 1171 et seq.), is amended by  
25 deleting the heading of title VI, “OPERATING-DIF-

1 FERENTIAL SUBSIDY” and inserting a new heading  
2 and subheading as follows:

3 “TITLE VI—OPERATING-DIFFERENTIAL  
4 SUBSIDY AND MARITIME SECURITY PROGRAM  
5 “SUBPART A—OPERATING-DIFFERENTIAL SUBSIDY”.

6 (b) Section 605(b) (46 App. U.S.C. 1175(b)) is  
7 amended to read as follows:

8 “(b) No operating-differential subsidy shall be paid  
9 for the operation of a vessel that is more than twenty-  
10 five years of age, unless the Secretary of Transportation  
11 has determined, before the enactment of the Maritime Se-  
12 curity and Trade Act of 1994, that it is in the public inter-  
13 est to grant such financial aid for the operation of such  
14 vessel.”.

15 (c) Title VI of the Merchant Marine Act, 1936, as  
16 amended (46 App. U.S.C. 1171 et seq.), is amended by  
17 adding a new section 616 following section 615, to read  
18 as follows:

19 “SEC. 616. (a)(1) The Secretary of Transportation  
20 may authorize a contractor operating a liner vessel and  
21 receiving an operating-differential subsidy under subpart  
22 A of this title to construct, reconstruct, or acquire a liner  
23 vessel of over five thousand deadweight tons worldwide to  
24 replace a vessel that would reach the end of its  
25 subsidizable life prior to the expiration of the contractor’s

1 operating-differential subsidy contract. The replacement  
2 vessel shall be documented under chapter 121 of subtitle  
3 II of title 46, United States Code.

4 “(2) A replacement liner vessel shall not be eligible  
5 for operating-differential subsidy pursuant to subpart A  
6 of this title, and shall be limited to payments in the  
7 amounts set forth in subpart B of this title until the exist-  
8 ing contract pursuant to subpart A terminates according  
9 to its terms.

10 “(b)(1) The Secretary of Transportation may author-  
11 ize a contractor operating a bulk cargo vessel and receiv-  
12 ing operating-differential subsidy under subpart A of this  
13 title to construct, reconstruct, or acquire a bulk cargo ves-  
14 sel of over five thousand deadweight tons worldwide to re-  
15 place a vessel that would reach the end of its subsidizable  
16 life prior to the expiration of the contractor’s operating-  
17 differential subsidy contract. The replacement vessel shall  
18 be documented under chapter 121 of subtitle II of title  
19 46, United States Code.

20 “(2) A replacement bulk cargo vessel shall continue  
21 to receive an operating-differential subsidy under an exist-  
22 ing contract pursuant to subpart A of this title until the  
23 existing contract terminates according to its terms.

24 “(c) Liner vessels and bulk cargo vessels constructed  
25 pursuant to subsections (a) and (b) of this section shall

1 be deemed to have been built in a domestic shipyard for  
2 the purposes of section 610 of this Act: *Provided*, That  
3 the provisions of section 607 of this Act shall not apply  
4 to vessels constructed, reconstructed, or acquired pursuant  
5 to subsections (a) and (b) of this section.

6 “(d) Any existing foreign-built liner vessel that is ac-  
7 quired pursuant to subsection (a) of this section and docu-  
8 mented under chapter 121 of subtitle II of title 46, United  
9 States Code, shall be less than five years of age at the  
10 time of such documentation.

11 “(e) Any existing foreign-built bulk cargo vessel that  
12 is acquired pursuant to subsection (b) of this section and  
13 documented under chapter 121 of subtitle II of title 46,  
14 United States Code, shall be less than five years of age  
15 at the time of such documentation.

16 “(f) No authority granted by the Secretary of Trans-  
17 portation to construct, reconstruct, or acquire vessels pur-  
18 suant to subsections (a) and (b) of this section may be  
19 sold, assigned, conveyed, leased or otherwise transferred  
20 to any other party, without the written consent of the Sec-  
21 retary of Transportation pursuant to section 608 of this  
22 title.

23 “(g) Any repair or alteration necessary to bring a ves-  
24 sel, which is constructed, reconstructed, or acquired pur-  
25 suant to subsections (a) and (b) of this section, into com-

1 pliance with parts B and C of subtitle II of title 46, United  
2 States Code, or any regulations prescribed under those  
3 parts, shall be performed in a privately owned shipyard  
4 in the United States.”.

5 (d) Title VI of the Merchant Marine Act, 1936, as  
6 amended (46 App. U.S.C. 1171 et seq.), is amended by  
7 adding a new section 617 following the new section 616,  
8 to read as follows:

9 “SEC. 617. (a) After the date of enactment of the  
10 Maritime Security and Trade Act of 1994, the Secretary  
11 of Transportation shall not enter into any new contract  
12 for an operating-differential subsidy under subpart A of  
13 this title.

14 “(b) Notwithstanding any other provision of this Act,  
15 any operating-differential subsidy contract in effect under  
16 title VI on the day before the date of enactment of the  
17 Maritime Security and Trade Act of 1994—

18 “(1) shall continue in effect and terminate as  
19 set forth in the contract, unless voluntarily termi-  
20 nated at an earlier date by the persons (other than  
21 the United States Government) that are parties to  
22 the contract; and

23 “(2) may not be renewed or extended.

24 “(c) After the date of enactment of the Maritime Se-  
25 curity and Trade of 1994, an owner or operator of a vessel

1 covered by an operating-differential subsidy contract  
2 under subpart A of this title may operate such vessel in  
3 the foreign commerce of the United States without restric-  
4 tion, notwithstanding any other provision of this Act.

5 “(d) With respect to a liner vessel—

6 “(1) whose operator receives operating-differen-  
7 tial subsidy pursuant to a contract under this title,  
8 which is in force on October 1, 1993, and if the Sec-  
9 retary approves the replacement of such vessel with  
10 a comparable vessel, or

11 “(2) covered by an operating agreement under  
12 subpart B of this title, and if the Secretary approves  
13 the replacement of such vessel with a comparable  
14 vessel for inclusion in the fleet established under  
15 subpart B of title VI,

16 such vessel may be transferred and registered under the  
17 flag of an effective United States-controlled foreign flag,  
18 notwithstanding any other provision of law: *Provided*,  
19 That the vessel is available to be requisitioned by the Sec-  
20 retary of Transportation pursuant to section 902 of this  
21 Act (46 App. U.S.C. 1242).”.

22 (e) Title VI of the Merchant Marine Act, 1936, as  
23 amended (46 App. U.S.C. 1171 et seq.) is amended by  
24 adding a new subpart B to read as follows:



1       “SUBPART B—MARITIME SECURITY PROGRAM

2               “ESTABLISHMENT OF FLEET

3       “SEC. 650. (a) The Secretary of Transportation shall  
4 encourage the establishment of a fleet of active, militarily  
5 useful, privately owned liner vessels to maintain an Amer-  
6 ican presence in international commercial shipping and  
7 meet national defense and other security requirements.  
8 The fleet shall consist of privately owned, United States-  
9 flag liner vessels for which there are in effect operating  
10 agreements under this subpart.

11       “(b) A liner vessel may not be included in the fleet  
12 unless—

13               “(1) it is operated by an “ocean common car-  
14 rier” as defined in section 3 of the Shipping Act of  
15 1984 (46 App. U.S.C. 1702);

16               “(2) it is a vessel that is fifteen years of age  
17 or less on the date an operating agreement is en-  
18 tered into under section 651, unless the Secretary of  
19 Transportation, in consultation with the Secretary of  
20 Defense, determines that it is in the national inter-  
21 est to waive this requirement;

22               “(3) it is a vessel that is less than five years  
23 of age at the time it is documented under chapter  
24 121 of subtitle II of title 46, United States Code, if  
25 it is foreign-built;

1           “(4) the Secretary of Transportation, after con-  
2           sultation with the Secretary of Defense, determines  
3           that the vessel is necessary to maintain a United  
4           States presence in international commercial shipping  
5           or determines that the vessel is militarily useful for  
6           meeting the sealift needs of the United States with  
7           respect to national emergencies; and

8           “(5) the owner or operator of the vessel is a cit-  
9           izen of the United States as set forth in section 651.

10                           “OPERATING AGREEMENTS

11           “SEC. 651. (a) The Secretary of Transportation shall  
12           require, as a condition of including any vessel in the fleet,  
13           that the owner or operator of the vessel enter into an oper-  
14           ating agreement with the Secretary of Transportation pur-  
15           suant to this section.

16           “(b) An operating agreement pursuant to this section  
17           shall require that, during the period of the agreement—

18                           “(1) each vessel covered by the operating agree-  
19           ment—

20                                   “(A) shall be operated exclusively in the  
21                           foreign trade, and

22                                   “(B) shall not be operated in the coastwise  
23                           trade of the United States or in mixed domestic  
24                           and foreign trade; and

25                           “(2) the owner or operator of a vessel covered  
26           by the operating agreement shall have the vessel

1       documented under chapter 121 of subtitle II of title  
2       46, United States Code, and shall maintain that  
3       documentation.

4       “(c) An owner or operator of a vessel covered by an  
5       operating agreement under this subpart may operate this  
6       vessel in the foreign commerce of the United States with-  
7       out restriction.

8       “(d) (1) The Secretary of Transportation is author-  
9       ized to enter into operating agreements: *Provided*, That  
10      the total does not exceed \$1,000,000,000 for the fiscal  
11      years 1995 through 2004.

12      “(2) An operating agreement pursuant to this section  
13      shall provide that the Secretary of Transportation pay to  
14      the owner or operator of each liner vessel that is included  
15      in the operating agreement, an amount per vessel per year  
16      that does not exceed \$2,500,000, for fiscal years 1995  
17      through 1997, and does not exceed \$2,000,000, for fiscal  
18      years 1998 through 2004. The amount per year paid to  
19      the owner or operator of a liner vessel under an operating  
20      agreement pursuant to this section shall be paid at the  
21      end of each month in equal installments.

22      “(3) An amount of \$1,000,000,000 is appropriated  
23      to carry out this section.

24      “(e) In order to qualify for the annual payments  
25      under this section, the owner or operator shall certify an-

1 nually, pursuant to regulations issued by the Secretary,  
2 that each vessel covered by an operating agreement was  
3 operated in a trade required by section 651(b)(1) for at  
4 least three hundred and twenty days in a fiscal year, in-  
5 cluding days during which the liner vessel is drydocked,  
6 surveyed, inspected, or repaired.

7 “(f) Without regard to an operating agreement in ef-  
8 fect with an owner or operator of a liner vessel under this  
9 section, the Secretary of Transportation shall not make  
10 any payment under this section for a vessel with respect  
11 to any period in which the vessel is—

12 “(1) subject to an operating-differential subsidy  
13 contract under subpart A of title VI of this Act;

14 “(2) not operated or maintained in accordance  
15 with an operating agreement under this subpart; or

16 “(3) more than twenty-five years of age.

17 “(g) With respect to payments under this section for  
18 a vessel covered by an operating agreement, the Secretary  
19 of Transportation—

20 “(1) shall not reduce any payment for the oper-  
21 ation of a vessel to carry military or other preference  
22 cargoes under—

23 “(A) section 2631 of title 10, United  
24 States Code; or

1           “(B) section 1241–1 of title 46, Appendix,  
2           United States Code;

3           “(2) shall not make any payment for each day  
4           that a vessel is engaged in transporting more than  
5           five thousand tons of civilian bulk preference cargoes  
6           pursuant to section 901(a), 901(b), or 901b of this  
7           Act; and

8           “(3) shall reduce any payment for each day  
9           that a vessel is engaged in transporting less than  
10          five thousand tons of civilian bulk preference cargoes  
11          pursuant to section 901(a), 901(b), or 901b of this  
12          Act, by an amount which bears the same ratio to the  
13          amount otherwise payable as revenue for the car-  
14          riage of preference cargo bears to the gross revenue  
15          derived from the entire voyage.

16          “(h) The Secretary of Transportation shall enter into  
17          operating agreements in the following order of priority:

18               “(1) Liner vessel or vessels owned or operated  
19               by a person that is a citizen of the United States  
20               under section 2 of the Shipping Act, 1916; and then

21               “(2) Liner vessel or vessels owned or operated  
22               by a person that is eligible to document a vessel  
23               under chapter 121 of subtitle II of title 46, United  
24               States Code.

1       “(i) No authority granted by the Secretary of Trans-  
2 portation to an owner or operator of a vessel covered by  
3 an operating agreement under this subpart may be sold,  
4 assigned, conveyed, leased or otherwise transferred to any  
5 other party, without the written consent of the Secretary  
6 of Transportation pursuant to the provisions of section  
7 608 of this title.

8       “(j) Any authority granted by the Secretary of Trans-  
9 portation to an owner or operator of a vessel covered by  
10 an operating agreement under this subpart shall be used  
11 by the holder of the operating agreement within one year  
12 from the date such authority is granted for existing vessels  
13 and within two years from the date such authority is  
14 granted for newly constructed vessels, or the authority  
15 shall revert to the Secretary of Transportation for such  
16 disposition as determined appropriate.

17       “(k) An operating agreement entered into by the Sec-  
18 retary of Transportation under this subpart shall be effec-  
19 tive for a period of not more than ten years, and, under  
20 any condition, terminate not later than September 30,  
21 2004.

22       “(l) An operating agreement entered into by the Sec-  
23 retary of Transportation under this subpart shall require  
24 the owner or operator of a vessel covered by an operating  
25 agreement under this subpart to enroll in an Emergency

1 Preparedness Program, pursuant to the requirements of  
2 section 652, under such terms and conditions as the Sec-  
3 retary may prescribe.

4 “NATIONAL SECURITY REQUIREMENTS

5 “SEC. 652. (a) On a request of the President, acting  
6 through the Secretary of Transportation in consultation  
7 with the Secretary of Defense, during time of war or na-  
8 tional emergency or when decided by the President to be  
9 necessary in the national interest, acting through the Sec-  
10 retary of Transportation in consultation with the Sec-  
11 retary of Defense, an owner or operator of a vessel covered  
12 by an operating agreement under this subpart shall make  
13 available commercial transportation resources pursuant to  
14 an Emergency Preparedness Program established by the  
15 Secretary of Transportation in consultation with the Sec-  
16 retary of Defense.

17 “(b) The commercial transportation resources to be  
18 made available shall include ships, capacity, intermodal  
19 systems or equipment, terminal facilities, and intermodal  
20 and management services, or any portion of these re-  
21 sources, as the Secretary may determine to be necessary.

22 “(c) The Secretary of Transportation shall not reduce  
23 the amount of equal monthly installment payments under  
24 section 651 to an owner or operator who makes commer-  
25 cial transportation resources available pursuant to an  
26 Emergency Preparedness Program under this section.

1       “(d) An owner or operator who makes a vessel avail-  
2 able pursuant to this section shall be permitted to employ  
3 a foreign-flag vessel in the foreign commerce of the United  
4 States, without receiving additional compensation, as a re-  
5 placement for a vessel covered by an operating agreement,  
6 until a vessel used is redelivered.

7       “DOMESTIC NONCONTIGUOUS TRADE RESTRICTIONS

8       “SEC. 653. (a) PROHIBITION.—

9               “(1) IN GENERAL.—Except as provided in this  
10 section, an owner or operator may not receive any  
11 payment under this subpart—

12                   “(A) if the owner or operator or a related  
13 party with respect to the owner or operator, di-  
14 rectly or indirectly owns, charters, or operates  
15 a vessel engaged in the transportation of cargo  
16 in a noncontiguous trade other than in accord-  
17 ance with a waiver under subsection (b), (c), or  
18 (d); or

19                   “(B) if the owner or operator is authorized  
20 to operate a vessel in noncontiguous trade  
21 under such a waiver, and there is a—

22                           “(i) material change in the domestic  
23 ports served by the owner or operator from  
24 the ports permitted to be served under the  
25 waiver;



1           “(ii) material increase in the annual  
2           number or the frequency of sailings by the  
3           owner or operator from the number or fre-  
4           quency permitted under the waiver; or

5           “(iii) material increase in the annual  
6           volume of cargo carried or annual capacity  
7           utilized by the owner or operator from the  
8           annual volume of cargo or annual capacity  
9           permitted under the waiver.

10          “(2) LIMITATIONS ON PROHIBITION.—Para-  
11          graph (1) applies to an owner or operator only in  
12          the years specified for payments under the operating  
13          agreement entered into by the owner or operator.

14          “(b) GENERAL WAIVER AUTHORITY.—

15          “(1) IN GENERAL.—Except as provided in sub-  
16          section (c), the Secretary may waive, in writing, the  
17          application of subsection (a) to an owner or operator  
18          pursuant to an application submitted in accordance  
19          with this subsection, unless the Secretary finds  
20          that—

21               “(A) the waiver would result in unfair  
22               competition to any person that operates vessels  
23               as a carrier of cargo in a service exclusively in  
24               the noncontiguous trade for which the waiver is  
25               applied;

1           “(B) subject to paragraph (6), existing  
2           service in that noncontiguous trade is adequate;  
3           or

4           “(C) the waiver will result in prejudice to  
5           the objects or policy of this title or Act.

6           “(2) TERMS OF WAIVER.—Any waiver granted  
7           by the Secretary under this subsection shall state—

8           “(A) the domestic ports permitted to be  
9           served,

10           “(B) the annual number or frequency of  
11           sailings that may be provided; and

12           “(C)(i) the annual volume of cargo per-  
13           mitted,

14           “(ii) for containerized or trailer service, the  
15           annual forty foot equivalent unit shipboard con-  
16           tainer and trailer or vehicle or general cargo ca-  
17           pacity permitted, or

18           “(iii) for tug and barge service, the annual  
19           barge house cubic foot capacity and the annual  
20           barge deck general cargo capacity, or forty foot  
21           equivalent unit container, trailer, or vehicle ca-  
22           pacity, permitted.

23           “(3) APPLICATIONS FOR WAIVERS.—An appli-  
24           cation for a waiver under this subsection may be

1 submitted by an owner or operator and shall de-  
2 scribe, as applicable, the nature and scope of—

3 “(A) the service proposed to be conducted  
4 in a noncontiguous trade under the waiver; or

5 “(B) any proposed material change or in-  
6 crease in a service in a noncontiguous trade  
7 permitted under a previous wavier.

8 “(4) ACTION ON APPLICATION AND HEARING.—

9 “(A) NOTICE AND PROCEEDING.—Within  
10 thirty days after receipt of an application for a  
11 waiver under this subsection, the Secretary  
12 shall—

13 “(i) publish a notice of the applica-  
14 tion;

15 “(ii) begin a proceeding on the appli-  
16 cation section 554 of title 5, United States  
17 Code, to receive—

18 “(I) evidence of the nature,  
19 quantity, and quality of the existing  
20 service in the noncontiguous trade for  
21 which the waiver is applied;

22 “(II) a description of the pro-  
23 posed service or proposed material  
24 change or increase in a previously per-  
25 mitted service;

1                   “(III) the projected effect of the  
2                   proposed service or proposed material  
3                   change or increase in existing service;  
4                   and

5                   “(IV) recommendations on condi-  
6                   tions that should be contained in any  
7                   waiver for the proposed service or ma-  
8                   terial change or increase.

9                   “(B) INTERVENTION.—An applicant for a  
10                  waiver under this subsection, and any person  
11                  that operates cargo vessels in the noncontiguous  
12                  trade for which a waiver is applied and that has  
13                  any interest in the application, may intervene in  
14                  the proceedings on the application.

15                  “(C) HEARING.—Before deciding whether  
16                  to grant a waiver under this subsection, the  
17                  Secretary shall hold a public hearing in an ex-  
18                  peditious manner, reasonable notice of which  
19                  shall be published.

20                  “(5) DECISION.—The Secretary shall complete  
21                  all proceedings and hearings on an application under  
22                  this subsection and issue a decision on the record  
23                  within ninety days after receipt of the final briefs  
24                  submitted for the record.

1           “(6) LIMITATION ON CONSIDERATION OF CER-  
2 TAIN EXISTING SERVICE.—

3           “(A) LIMITATION.—In determining wheth-  
4 er to grant a waiver under this subsection for  
5 noncontiguous trade with Hawaii, the Secretary  
6 shall not consider the criterion set forth in  
7 paragraph (1)(B) if a qualified operator—

8           “(i) is a party to an operating agree-  
9 ment under this subpart, and

10           “(ii) operates four or more vessels in  
11 foreign commerce in competition with an-  
12 other operator who is a party to an operat-  
13 ing agreement under this subpart.

14           “(B) QUALIFIED OPERATOR.—In this  
15 paragraph, the term ‘qualified operator’ means  
16 a person that on July 1, 1992, offered service  
17 as an operator of containerized vessels, trailer  
18 vessels, or combination container and trailer  
19 vessels in domestic trade with Hawaii and the  
20 Johnston Islands (including a related party  
21 with respect to the person).

22           “(c) WAIVERS FOR EXISTING NONCONTIGUOUS  
23 TRADE OPERATORS.—

24           “(1) IN GENERAL.—The Secretary shall waive  
25 the application of subsection (a) to an owner or op-

erator who is a party to an operating agreement under this subpart, pursuant to an application submitted in accordance with this subsection if the Secretary finds that the owner or operator, or a related party or predecessor in interest with respect to the owner or operator—

“(A) engaged in bona fide operation of a vessel as a carrier of cargo by water—

“(i) in a noncontiguous trade on July 1, 1992; or

“(ii) in furnishing seasonal service in a season ordinarily covered by its operation, during the twelve calendar months preceding July 1, 1992; and

“(B) has operated in that service since that time, except for interruptions of service resulting from military contingency or over which the owner or operator (or related party or predecessor in interest) had no control.

“(2) TERMS OF WAIVER.—

“(A) IN GENERAL.—Except as otherwise provided in this paragraph, the level of service permitted under a waiver under this subsection shall be the level of service provided by the applicant (or related party or predecessor in inter-

1 est) in the relevant noncontiguous trade during,  
2 for year-round service, the six calendar months  
3 preceding July 1, 1992, or for seasonal service,  
4 the twelve calendar months preceding July 1,  
5 1992, determined by—

6 “(i) the domestic ports called;

7 “(ii) the number of sailings actually  
8 made, except as to interruptions in the  
9 service in the noncontiguous trade result-  
10 ing from military contingency or over  
11 which the applicant (or related party or  
12 predecessor in interest) had no control;  
13 and

14 “(iii) the volume of cargo carried or,  
15 for containerized or trailer service, the  
16 forty-foot equivalent unit shipboard con-  
17 tainer, trailer, or vehicle or general cargo  
18 capacity employed, or, for tug and barge  
19 service, the barge house cubic foot capacity  
20 and barge deck general cargo capacity or  
21 forty-foot equivalent unit container, trailer,  
22 or vehicle capacity, employed.

23 “(B) CERTAIN CONTAINERIZED VES-  
24 SELS.—If an applicant under this subsection  
25 was offering service as an operator of container-

1            ized vessels in noncontiguous trades with Ha-  
2            waii, Puerto Rico, and Alaska on July 1, 1992,  
3            a waiver under this subsection for the applicant  
4            shall permit a level of service consisting of—

5            “(i) one hundred and four sailings  
6            each year from the West Coast of the  
7            United States to Hawaii with an annual  
8            capacity allocated to the service of 75 per  
9            centum of the total capacity of the vessels  
10           employed in the service on July 1, 1992;

11           “(ii) one hundred and fifty-six sailings  
12           each year in each direction between the  
13           east coast or gulf coast of the United  
14           States and Puerto Rico with an annual ca-  
15           pacity allocated to the service of 75 per  
16           centum of the total capacity of its vessels  
17           employed in the service on the date of the  
18           enactment of the Maritime Security and  
19           Trade Act of 1994; and

20           “(iii) one hundred and three sailings  
21           each year in each direction between Wash-  
22           ington and Alaska with an annual capacity  
23           allocated to the service in each direction of  
24           100 per centum of the total capacity of its



1 vessels employed in the service on July 1,  
2 1992.

3 “(C) CERTAIN TUGS AND BARGES.—If an  
4 applicant under this subsection was offering  
5 service as an operator of tugs and barges in  
6 noncontiguous trades with Hawaii, Puerto Rico,  
7 and Alaska on July 1, 1992, a waiver under  
8 this subsection for the applicant shall permit a  
9 level of service consisting of—

10 “(i) seventeen sailings each year in  
11 each direction between ports in Washing-  
12 ton, Oregon, and northern California and  
13 ports in Hawaii with an annual barge  
14 house cubic foot capacity and annual barge  
15 deck forty-foot equivalent unit container  
16 capacity in each direction of 100 per cen-  
17 tum of the total of the capacity of its ves-  
18 sels employed in the service during the six  
19 calendar months preceding July 1, 1992,  
20 annualized;

21 “(ii) two hundred and fifty-three  
22 sailings each year in each direction be-  
23 tween the east coast or gulf coast of the  
24 United States and Puerto Rico with an an-  
25 nual forty-foot equivalent unit container or

1 trailer capacity equal to 100 per centum of  
2 the capacity of its barges employed in the  
3 service on the date of the enactment of the  
4 Maritime Security and Trade Act of 1994;

5 “(iii) thirty-seven regularly scheduled  
6 tandem tow rail barge sailings and ten ad-  
7 ditional single tow rail barge sailings each  
8 year in each direction between Washington  
9 and the Alaskan port range between and  
10 including Anchorage and Whittier with an  
11 annual capacity allocated to the service in  
12 each direction of 100 per centum of the  
13 total rail car capacity of its vessels em-  
14 ployed in the service on July 1, 1992;

15 “(iv) eight regularly scheduled single  
16 tow sailings each year in each direction be-  
17 tween Washington and points in Alaska  
18 (not including the port range between and  
19 including Anchorage and Whittier, except  
20 occasional deviations to discharge  
21 incidental quantities of cargo) with an an-  
22 nual capacity allocated to the service in  
23 each direction of 100 per centum of the  
24 total capacity of its vessels employed in the  
25 service on July 1, 1992; and

1           “(v) unscheduled, contract carrier tug  
2           and barge service between points in Alaska  
3           south of the Arctic Circle not served by the  
4           common carrier service permitted under  
5           clause (iii) and points in the contiguous  
6           forty-eight States, with an annual capacity  
7           allocated to that service not exceeding 100  
8           per centum of the total capacity of the  
9           equipment that was dedicated to service  
10          south of the Arctic Circle on July 1, 1992,  
11          and actually utilized in that service in the  
12          two-year period preceding that date.

13          “(D) ANNUALIZATION.—Capacity other-  
14          wise required by this paragraph to be permitted  
15          under a waiver under this subsection shall be  
16          annualized if not a seasonal service.

17          “(E) ADJUSTMENTS.—

18               “(i) Each written waiver granted by  
19               the Secretary under this subsection shall  
20               contain a statement that the annual capac-  
21               ity permitted under this waiver in any di-  
22               rection shall increase for a calendar year  
23               by the percentage of increase during the  
24               preceding calendar year in the real gross  
25               product of the State or territory to which

1 goods are transported in the noncontiguous  
2 trade covered by the waiver, or its equiva-  
3 lent economic measure as determined by  
4 the Secretary if the real gross product is  
5 not available, and that the increase shall  
6 not be considered to be a material change  
7 or increase for purposes of subsection  
8 (a)(1)(B).

9 “(ii) The increase in permitted capac-  
10 ity under clause (i) in the noncontiguous  
11 trade with Alaska shall be allowed only to  
12 the extent the operator actually uses that  
13 increased capacity to carry cargo in the  
14 permitted service in the calendar year im-  
15 mediately following the preceding increase  
16 in gross product. However, if an operator  
17 operating exclusively containerized vessels  
18 in trade on July 1, 1992, carries an aver-  
19 age load factor of at least 90 per centum  
20 of permitted capacity (including the capac-  
21 ity, if any, both authorized and used under  
22 the previous sentence) during nine months  
23 of any one calendar year, than in the next  
24 following calendar year and thereafter, the  
25 requirement that additional capacity must

1 be used in the immediately following year  
2 does not apply.

3 “(F) SERVICE LEVELS NOT INCREASED BY  
4 TERMINATION OF AGREEMENT.—The termi-  
5 nation of an operating agreement under Sub-  
6 part B of this title shall not be considered to  
7 increase a level of service specified in subpara-  
8 graph (A), (B), or (C) if the contractor under  
9 the agreement enters into another operating  
10 agreement after that termination.

11 “(3) APPLICATIONS FOR WAIVERS.—For a  
12 waiver under this subsection a contractor shall sub-  
13 mit to the Secretary an application certifying the  
14 facts required to be found under paragraph (1) (A)  
15 or (B), as applicable.

16 “(4) ACTION ON APPLICATION.—

17 “(A) NOTICE.—The Secretary shall pub-  
18 lish a notice of receipt of an application for a  
19 waiver under this subsection within thirty days  
20 after receiving the application.

21 “(B) HEARING PROHIBITED.—The Sec-  
22 retary may not conduct a hearing on an appli-  
23 cation for a waiver under this subsection.

24 “(C) SUBMISSION OF COMMENTS.—The  
25 Secretary shall give every person operating a

1 cargo vessel in a noncontiguous domestic trade  
2 for which a waiver is applied for under this sub-  
3 section and who has any interest in the applica-  
4 tion a reasonable opportunity to submit com-  
5 ments on the application and on the description  
6 of the service that would be permitted by any  
7 waiver that is granted by the Secretary under  
8 the application.

9 “(5) DECISION ON APPLICATION.—Subject to  
10 the time required for publication of notice and for  
11 receipt and evaluation of comments by the Sec-  
12 retary, an application for a waiver under this sub-  
13 section submitted at the same time the applicant ap-  
14 plies for inclusion of a vessel in the fleet established  
15 under this subpart shall be granted in accordance  
16 with the level of service determined by the Secretary  
17 under this subsection by not later than the date on  
18 which the Secretary offers to the applicant an oper-  
19 ating agreement with respect to that vessel.

20 “(6) CHANGE OR INCREASE IN SERVICE.—Any  
21 material change or increase in a service that is sub-  
22 ject to a waiver under this subsection is not author-  
23 ized except to the extent the change or increase is  
24 permitted by a waiver under subsection (b).

1       “(d) EMERGENCY WAIVER.—Notwithstanding any  
2 other provision of this section, the Secretary may, without  
3 hearing, temporarily waive the application of subsection  
4 (a)(1)(B) if the Secretary finds that a material change or  
5 increase is essential in order to respond adequately to (1)  
6 an environmental or natural disaster or emergency, or (2)  
7 another emergency declared by the President. Any waiver  
8 shall be for a period of not to exceed forty-five days, except  
9 that a waiver may be renewed for thirty-day periods if the  
10 Secretary finds that adequate capacity continues to be  
11 otherwise unavailable.

12       “(e) ANNUAL REPORT ON WAIVERS.—Each waiver  
13 under this section shall require the person who is granted  
14 the waiver to submit to the Secretary each year an annual  
15 report setting forth for the service authorized by the waiv-  
16 er—

17               “(1) the ports served during the year;

18               “(2) the number or frequency of sailings per-  
19 formed during the year; and

20               “(3) the volume of cargo carried or, for contain-  
21 erized or trailer service, the annual forty-foot equiva-  
22 lent unit shipboard container, trailer, or vehicle ca-  
23 pacity utilized during the year, or for tug and barge  
24 service, the annual barge house and barge deck ca-  
25 pacity utilized during the year.

1 “(f) DEFINITIONS.—In this section—

2 “(1) the term “noncontiguous trade” means  
3 trade between—

4 “(A) a point in the contiguous forty-eight  
5 States; and

6 “(B) a point in Alaska, Hawaii, or Puerto  
7 Rico, other than a point in Alaska north of the  
8 Arctic Circle; and

9 “(2) the term ‘related party’ means—

10 “(A) a holding company, subsidiary, affili-  
11 ate, or associate of a owner or operator who is  
12 a party to an operating agreement under this  
13 subpart; and

14 “(B) an officer, director, agency, or other  
15 executive of a contractor or of a person referred  
16 to in subparagraph (A).

17 “DEFINITIONS

18 “SEC. 654. For the purposes of subpart B of this  
19 title:

20 “(1) The term ‘citizen of the United States’  
21 means a person that is a citizen of the United States  
22 under section 651 of this subpart.

23 “(2) The term ‘operating agreement’ means an  
24 operating agreement that takes effect under section  
25 651 of this subpart and covers one or more ves-  
26 sels.’’.



1 (f) EFFECTIVE DATE.—The amendments made by  
2 subsections (a) through (e) of this section shall be effective  
3 beginning on the date which is one hundred and twenty  
4 days after the date of enactment of the Maritime Security  
5 and Trade Act of 1994.

6 **SEC. 203. TONNAGE FEES.**

7 (a) INCREASE OF DUTIES.—Section 36 of the Act of  
8 August 5, 1909 (46 App. U.S.C. 121) is amended in the  
9 second paragraph by—

10 (1) inserting after “1998,” the first place it ap-  
11 pears “and a supplemental duty of 15 cents per ton,  
12 not to exceed in the aggregate 75 cents per ton in  
13 any one year, for fiscal years 1995 through 2004,”;  
14 and

15 (2) inserting after “1998,” the second place it  
16 appears, “and a supplemental duty of 44 cents per  
17 ton, not to exceed \$2.20 per ton in any one year, for  
18 fiscal years 1995 through 2004,”.

19 (b) OFFSETTING RECEIPTS.—The increased tonnage  
20 fees collected as a result of the amendments made by sub-  
21 section (a) shall be deposited in the general fund of the  
22 Treasury as offsetting receipts of the department in which  
23 the Coast Guard is operating and ascribed to Coast Guard  
24 activities.

1 **SEC. 204. USE OF FOREIGN-FLAG VESSELS.**

2 Section 804 of title VIII of the Merchant Marine Act,  
3 1936, as amended (46 App. U.S.C. 1222), is amended by  
4 adding a new subsection (f) as follows:

5 “(f) The provisions of subsection (a) of this section  
6 shall not preclude an owner or operator receiving operat-  
7 ing assistance under subpart A or subpart B of title VI,  
8 or any holding company, subsidiary, affiliate or associate  
9 of such owner or operator, or any officer, director, agency,  
10 or executive thereof from—

11 “(1) owning, chartering, or operating any for-  
12 eign-flag vessel that is operated as a feeder vessel  
13 for a United States-flag service under an operating  
14 agreement pursuant to subpart B of title VI;

15 “(2) owning, chartering, or operating any for-  
16 eign-flag vessel in line haul service between the Unit-  
17 ed States and foreign ports: *Provided*, That the for-  
18 eign-flag vessel was operated by that owner or oper-  
19 ator on the date of enactment of this Act; or that  
20 the owner or operator, with respect to each addi-  
21 tional foreign-flag vessel, has first applied to have  
22 that vessel added to the existing operating agree-  
23 ment, and the Secretary denies the application: *And*  
24 *provided further*, That any foreign-flag vessel in line  
25 haul service between the United States and foreign  
26 ports is (a) registered under the flag of an effective

1 United States-controlled foreign flag, and (b) avail-  
2 able to be requisitioned by the Secretary of Trans-  
3 portation pursuant to section 902 of this Act;

4 “(3) owning, chartering, or operating foreign-  
5 flag liner vessels that are operated exclusively in for-  
6 eign-to-foreign service and not in the foreign com-  
7 merce of the United States;

8 “(4) owning, chartering, or operating foreign-  
9 flag bulk cargo vessels that are operated in both for-  
10 eign-to-foreign service and the foreign commerce of  
11 the United States;

12 “(5) chartering or operating foreign-flag vessels  
13 that are operated solely as replacement vessels for  
14 United States-flag vessels that are made available to  
15 the Secretary of Defense pursuant to section 652 of  
16 subpart B of title VI; or

17 “(6) entering into space charter agreements  
18 with foreign-flag carriers or acting as agent or  
19 broker for a foreign-flag vessel or vessels.

20 **SEC. 205. DEFINITION OF PRIVATELY OWNED UNITED**  
21 **STATES-FLAG COMMERCIAL VESSELS.**

22 The third sentence of section 901(b)(1) of title IX  
23 of the Merchant Marine Act, 1936, as amended (46 App.  
24 U.S.C. 1241(b)(1)), is deleted in its entirety and the fol-  
25 lowing is inserted in lieu thereof: “For purposes of this

1 section, the term ‘privately owned United States-flag com-  
2 mercial vessels’ shall be deemed to include (1) any pri-  
3 vately owned United States-flag commercial vessel con-  
4 structed in the United States, (2) any privately owned  
5 liner vessel constructed, reconstructed, or acquired outside  
6 the United States that is documented pursuant to chapter  
7 121 of title 46, United States Code, and is less than five  
8 years of age on the date of such documentation, and (3)  
9 any bulk cargo vessel constructed in or delivered by a ship-  
10 yard outside the United States after January 1, 1993. The  
11 term ‘privately owned United States-flag commercial ves-  
12 sels’ shall also be deemed to include any liner or bulk  
13 cargo vessel that so qualified pursuant to section 615 of  
14 title VI or section 901(b)(1) of title IX of this Act, prior  
15 to enactment of the Maritime Security and Trade Act of  
16 1994. The term ‘privately owned United States-flag com-  
17 mercial vessels’ shall not be deemed to include any liquid  
18 bulk cargo vessel that does not meet the requirements of  
19 section 3703a of title 46, United States Code.”.

20 **SEC. 206. USE OF FOREIGN-FLAG FEEDER VESSELS IN CAR-**  
21 **RIAGE OF PREFERENCE CARGOES.**

22 The provisions of law set forth in sections  
23 1241(b)(1), 1241–1 and 1241f of title 46, United States  
24 Code Appendix, requiring use of United States-flag vessels  
25 shall, with respect to liner vessels, be deemed fulfilled, as

1 to the total of any shipment other than that of the Depart-  
2 ment of Defense covered by section 2631 of title 10,  
3 United States Code, if the actual ocean transportation of  
4 each shipment for which the United States-flag carrier has  
5 issued its own through bill-of-lading between the original  
6 port of lading and the port of final discharge, consists of  
7 transportation of the cargo by a combination of United  
8 States- and foreign-flag vessels: *Provided*, That, measured  
9 by distance, the United States-flag line haul portion of  
10 each voyage is greater than the foreign-flag feeder portion  
11 of each voyage pursuant to regulations issued by the Sec-  
12 retary of Transportation.

13 **SEC. 207. LIMITATION ON RESTRICTIONS.**

14 Notwithstanding any other provision of law or con-  
15 tract, all restrictions and requirements set forth in sec-  
16 tions 1153, 1156, and 1212 of title 46, United States  
17 Code Appendix, applicable to a vessel constructed, recon-  
18 structed, or reconditioned with the aid of construction-dif-  
19 ferential subsidy shall terminate: (1) for a liner or dry  
20 bulk cargo vessel, upon the expiration of the twenty-five-  
21 year period beginning on the date of original delivery of  
22 the vessel from the shipyard, and (2) for a liquid bulk  
23 cargo vessel, upon the expiration of the twenty-year period  
24 beginning on the date of original delivery of the vessel  
25 from the shipyard.



S 1945 IS——2

S 1945 IS——3